

FINAL BILL REPORT

SB 5272

PARTIAL VETO

C 515 L 07

Synopsis as Enacted

Brief Description: Modifying the administration of fuel taxes.

Sponsors: Senators Haugen and Sheldon; by request of Department of Licensing.

Senate Committee on Transportation

House Committee on Transportation

Background: Washington's fuel tax statutes declare that motor vehicle and special fuel taxes are imposed on the end user. Statute also directs fuel taxes be collected at the time the fuel is removed from the terminal rack, with those in the chain of distribution above the retailer being allowed certain credits and required to keep records showing the tax has been passed down the distribution chain. However, retailers are not allowed those same credits, and are not required to pass on the tax to the consumer, or required to show receipts indicating the tax has been paid. Also, there is no enforcement at the user level for motor vehicle fuels to determine if the tax was paid by the end user.

Under federal law, absent explicit Congressional authorization, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. On January 4, 2006, the U.S. District Court for the Western District of Washington entered an order in favor of two plaintiff tribes, the Squaxin and Swinomish, declaring that the legal incidence of Washington's motor vehicle fuel tax is on the retailer. The order states that Washington's motor vehicle fuel taxes may not be applied to motor vehicle fuels delivered to, received by, or sold by any retail fuel station that is owned by a tribe, tribal enterprise, or tribal member and located on tribal lands. Because the court found that the Squaxin and Swinomish meet the above criteria, the court entered an injunction against the collection of Washington's motor vehicle fuel taxes for fuels delivered to, received by, or sold by the plaintiffs' retail stations.

In June 2006, the Department of Licensing (DOL) and the two plaintiff tribes signed short-term intergovernmental agreements that are structured so the tribes charge their customers a fuel tax equivalent to the state motor vehicle fuel tax, with the tribes receiving 75 percent of the tax revenue collected and the state receiving 25 percent.

Summary: Current statutory language declaring that motor vehicle and special fuel taxes are imposed on the end user are eliminated from state motor vehicle and special fuel tax statutes. References to retailers, as well as refunds and credits available to, or tax liability of, licensed fuel distributors are also removed. Amendatory language is included to define licensees as fuel suppliers, importers, exporters, blenders, distributors, or international fuel tax agreement (IFTA) license holders; and explicitly states that the incidence of taxation be borne exclusively by all these licensees except fuel distributors.

New sections are added to the motor fuel and special fuel tax chapters authorizing the Governor (or the Department of Licensing as their designee) to enter into fuel tax compact agreements with federally recognized tribes operating or licensing retail stations on reservation or trust lands. Existing state/tribal fuel tax agreements are unaffected by the legislation. Any future compact agreement requires the tribal entity to: (1) acquire fuel only from lawful entities; (2) spend fuel tax proceeds, or equivalent amounts, only on transportation planning, construction, and maintenance of roads, bridges, boat ramps, transit services and facilities, police services, and other highway-related purposes; and (3) allow for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased for resale by the tribe and the use of fuel tax proceeds. Information from the tribal entity provided to the state is deemed personal information and exempt from public inspection or copying. DOL is required to prepare and submit an annual report to the Legislature on the status of existing compact agreements and ongoing negotiations with the tribes. New sections are also added to the motor fuel and special fuel tax chapters requiring tribal licensees and retailers to pass the tax through to end users as part of the selling price.

Various administrative changes are also addressed including: (1) moving the racing fuel exemption from the special fuels to the motor fuels chapter; (2) inserting IFTA provisions; and (3) moving compliance language to more appropriate subsections of the two fuel tax chapters.

Votes on Final Passage:

Senate	34	14	
House	83	11	(House amended)
Senate			(Senate refused to concur)
House	88	10	(House amended)
Senate	33	2	(Senate concurred)

Effective: May 15, 2007

Partial Veto Summary: The Governor's section veto retains the handling loss allowance currently available to fuel distributors.